

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

KAREN KAY LUJAN,

Respondent

HUDALJ 90-1413-DB

Karen Kay Lujan, *pro se*

Michael D. Noonan, Esquire
For the Department

Before: Alan W. Heifetz
Chief Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

Karen Kay Lujan, also known as Karen Richardson ("Respondent"), appeals her suspension and proposed debarment issued by C. Austin Fitts, Assistant Secretary of the U.S. Department of Housing and Urban Development ("the Department" or "HUD"), pursuant to 24 CFR Part 24. The Department issued the suspension and proposed the debarment of Respondent and her affiliate, Karanita Realtors ("Karanita"), as the result of Respondent's conviction in the United States District Court for the Northern District of Oklahoma on two counts of an indictment charging that Respondent violated 18 U.S.C. sections 1001 and 2.

By Letter dated October 25, 1989, the Assistant Secretary notified Respondent and her affiliate that their debarment was being proposed for an indefinite period of time because of the seriousness of Respondent's violations and the pattern of practices evidencing willful and egregious behavior. Respondent was temporarily suspended from

further participation in primary covered transactions and lower tier covered transactions pending a final determination of the issues in this case.¹

¹Respondent did not appeal the suspension action.

Respondent received several opportunities to submit a reply brief, but she failed to do so in a timely manner. On April 23, 1990, she was ordered to file a reply brief on or before May 3, 1990,² and she was informed that failure to respond to that order in a timely fashion "shall constitute consent to a summary decision." Respondent did not file her reply brief, however, until May 10, 1990, and did not explain the reason for the late filing.³

Because this action is based on a conviction, the hearing was limited to submission of documentary evidence and written briefs. See 24 C.F.R. sec. 24.313(b)(2)(ii). Accordingly, this case is ripe for decision.

Findings of Fact

1. Respondent is an owner of Karanita, which provides real estate financing and closing services, and a real estate broker engaged in the sale of single-family properties financed with Federal Housing Administration ("FHA") mortgage insurance. Because Respondent is a principal under 24 CFR 24.105(p) and Karanita an affiliate under 24 CFR 24.105(b),⁴ they are subject to the Department's enforcement authority in 24 CFR Part 24.

2. The Tulsa HUD Office discovered evidence of the submission of false information to HUD concerning five properties sold through Respondent's office. As a result, on January 10, 1985, the Tulsa HUD office issued a Temporary Denial of Participation (TDP) to Respondent and Karanita Realtors prohibiting them from participating in the sale of properties financed by HUD-insured mortgages for 12 months. Govt's Brief, Tab A.

²Initially, Respondent was ordered to file a reply brief by February 22, 1990, and was ordered to show cause by March 20, 1990, why a summary decision should not be issued in favor of the Department.

³In the Government's Reply to Respondent's Answer to Government's Brief in Support of Conviction, the Department noted that Respondent untimely filed her reply brief. In response to that pleading, Respondent argued that she did not receive the April 23, 1990 Order until several days later and that "she had to answer by May 3, 1990." She argued that the Department requested and received an extension to file its brief on the date that it was due and that she was disadvantaged because she lives out of state. This explanation, however, does not constitute an excuse for Respondent's late filing, which was due initially on February 22, 1990.

⁴Respondent's representation that "Karanita is no longer a functioning entity" does not affect its affiliate status or the Department's right to seek debarment.

3. On May 12, 1986, the Department advised Respondent and Karanita that they were suspended and that it proposed their debarment for a four-year period. Govt's Brief, Tab B. Those actions were based on the activities of Respondent, her employees and Karanita involving the submission of false information to HUD in connection with fifteen HUD-insured mortgage transactions.

4. In preparing the case for hearing, the Department determined that witnesses were difficult to find and it became aware that a criminal investigation was a strong possibility. Govt's Brief, Tab E. On December 4, 1986, the Department advised Respondent that the suspension and proposed debarment were withdrawn without prejudice. Govt's Brief, Tab F. The Department moved to dismiss Respondent's appeal of the suspension and debarment, and it was dismissed on December 9, 1986. Govt's Brief, Tabs G and H.

5. On June 15, 1989, Respondent pled guilty to two counts of an indictment⁵ in the United States District Court for the Northern District of Oklahoma for violating 18 U.S.C. sections 1001 and 2. Govt's Brief, Tab I. The offenses consisted of Respondent willfully and knowingly making false statements in connection with loan applications, information which was represented on HUD forms for the purpose of obtaining FHA-insured loans. Respondent received a suspended sentence, was placed on probation for five years, and was ordered to pay restitution to HUD in the amount of \$186,524.52. *Id.*

Discussion

As the Department correctly notes in its Reply to Respondent's Answer to Government's Brief, Respondent did not respond timely to the April 23, 1990 Order. Moreover, she has not shown good cause to excuse the late filing. Therefore, she has consented to the entry of a summary decision. In any event, the arguments raised in Respondent's reply brief do not entitle her to relief.

Debarment is a sanction which may be invoked by HUD as a measure of protecting the public by ensuring that only those qualified as "responsible" are allowed to participate in HUD programs. *Stanko Packing Co. v. Bergland*, 489 F. Supp. 947, 949 (D.D.C. 1980); *Roemer v. Hoffman*, 419 F. Supp. 130, 131 (D.D.C. 1976). "Responsibility" is a term of art used in government contract law. It encompasses the projected business

⁵The offenses in the Indictment related to sixteen properties.

risk of a person doing business with HUD. This includes his integrity, honesty, and ability to perform. The primary test for debarment is present responsibility although a finding of present lack of responsibility can be based upon past acts. *Schlesinger v. Gates*, 249 F.2d 111 (D.C. Cir. 1957); *Roemer, supra*. The debarment sanction may also be justified on the basis of its deterrent effect on those who do business with the government.

Respondent's conviction for falsification and/or making false statements is cause for her and her affiliate's debarment. See 24 CFR 24.305(a)(3), (4), and (d). Respondent does not challenge the debarment itself, but rather appeals only "the time period of [her] debarment." The regulations provide that:

The existence of a cause for debarment ... does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

24 CFR 24.300.

Respondent raises two arguments in mitigation. First, she argues that she received a TDP in 1985 and suspension and proposed debarment in 1986. Second, Respondent argues that she is being treated differently than others who were similarly involved. Neither argument, however, militates against a debarment of indefinite length.

Respondent's prior TDP and suspension and proposed debarment actions do not constitute mitigating circumstances. The regulatory scheme contemplates that a debarment action may follow a TDP. See 24 CFR 24.710(b). As for the 1986 suspension and debarment action, the Department dismissed it without prejudice because of a pending criminal investigation. Once Respondent was convicted, the Department moved swiftly to suspend Respondent and propose her debarment.⁶

⁶The Department argues that the prior TDP and suspension and debarment actions further demonstrate the need for an indefinite debarment period because "this is in essence the third time action has been taken against Respondent for grievous offenses." Govt's Brief at 13. The offenses charged in the indictment, however, occurred before the 1985 TDP and the 1986 suspension and proposed debarment action. Although the three actions may involve different properties and different numbers of properties, there is no evidence that Respondent engaged in any misconduct between the TDP and the first suspension and debarment action or between the two suspension and debarment actions. Consideration of the TDP and the first suspension and debarment action as successive sanctions is, therefore, inappropriate. These actions were simply consistent with the Department's enforcement authority and cannot be used to lengthen the debarment period.

Respondent argues that she is being treated unfairly because the Department seeks to debar her indefinitely, but has not sought to impose the same sanction on four others -- three of her employees and the co-owner of Karanita -- who were involved in the transactions. In order to establish a claim of selective administrative action, Respondent has the burden of proving that others similarly situated have not been subjected to as severe a sanction and that the allegedly discriminatory action was based on an impermissible motive. *Cf. Oyler v. Boles*, 368 U.S. 448, 456 (1962); *United States v. Ness*, 652 F.2d 890, 892 (9th Cir.), *cert. denied*, 454 U.S. 1126 (1981). Respondent's employees were not similarly situated.⁷ It is unnecessary to decide whether Respondent proved that the co-owner of Karanita was similarly situated because Respondent has neither alleged nor proved that the Department's selection of an indefinite debarment was based on an impermissible motive.⁸

A debarment generally should not exceed three years, but where circumstances warrant, a longer period of debarment may be imposed. 24 CFR 24.320(a)(1)(1989). The Department contends that, because of the willful and egregious nature of Respondent's offenses, Respondent must be debarred indefinitely in order to protect the public interest. Although the current regulations no longer require a showing of willful or egregious conduct, such a showing is one situation where a debarment period of greater than three years may be warranted.

The Department argues that Respondent's offenses were of such a willful and egregious nature because she was convicted of making, aiding and abetting false statements in connection with her participation in a HUD program. Her actions demonstrate a lack of honesty and integrity, and the fact that her employees were similarly involved in criminal misconduct further implicates her integrity and her ability to perform. The Department correctly notes that Respondent is responsible for her employees' collective criminal activities. Department's Brief at 15-16. Respondent admits that those employees were subject to her supervision and instruction "insofar as it goes". Answer of

⁷Contrary to Respondent's argument, that they may have pled guilty to the same number of counts and received fines similar to Respondent's is irrelevant. As their supervisor, Respondent may be held to a higher standard of responsibility.

⁸The Department argues that the co-owner of Karanita was not similarly situated because, unlike Respondent, she had never been previously suspended or debarred by HUD. Department's Reply to Respondent's Answer at 9. Respondent, on the other hand, argues that her co-owner was debarred in 1985. For reasons discussed above, under the circumstances of this case, the previous TDP and suspension and debarment action are not relevant to a determination of the length of debarment in this proceeding. Although Respondent argues that her co-owner was the broker in the office while the offenses occurred and that Respondent took over as broker after that time, she produced no evidence to that effect.

Karen Kay Lujan to Government's Brief in Support of Conviction ("Answer") at 2. (Emphasis deleted).

The honesty and integrity of individuals like Respondent upon whom the Department depends to supervise and instruct others on participation in HUD program requirements must be beyond reproach. The Department has the right to hold the supervisors to a higher standard of responsibility. Respondent's conduct, however, was not that of a responsible supervisor or broker, but rather was so pervasively and willfully improper that it compels the inference that she will continue to lack responsibility for the indefinite future. I conclude that the Department will be at risk if it continues to deal with Respondent. Respondent's actions were willful and egregious, and none of Respondent's arguments in mitigation warrants a period of debarment shorter than one of indefinite duration.

Based on the record in this case, I conclude that the debarment of Respondent and her affiliate, Karanita, for an indefinite period is appropriate and warranted under the circumstances to insure that the seriousness of the Respondent's misconduct will not be misconstrued and that the public trust and fisc will not be subjected to future risk by Respondent or her affiliate. If circumstances were to change in such a way in the future as to require reconsideration of this determination, an appropriate source of relief is available under 24 CFR 24.320(c).

Conclusion and Order

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that good cause exists to debar Karen Kay Lujan and her affiliate, Karanita, from further participation in primary covered transactions and lower tier covered transactions as either a participant or principal at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts with HUD for an indefinite period of time.

Alan W. Heifetz
Chief Administrative Law Judge

Dated: June 22, 1990.